



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

MAILED

APR 08 2011

OFFICE OF PETITIONS

In re Patent No. 7,873,083 :
Issued: January 18, 2011 : DECISION ON REQUEST
Application No. 10/531,691 : FOR RECONSIDERATION
Filed: April 23, 2007 : OF PATENT TERM ADJUSTMENT
Attorney Docket No: 35678-609N01US

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED ON FACE OF PATENT UNDER 37 C.F.R. §1.705(d)", filed March 17, 2011. Applicants request that the patent term adjustment under 35 U.S.C. 154(b) be corrected from eight hundred twenty-three (823) days to eight hundred twenty-four (824) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

Patentees argue that the patent term adjustment period should be 824 days and not 823 as indicated on the patent, on the basis that delay pursuant to 37 CFR 1.702(b) is based on a national stage commencement date under 35 U.S.C. 371(f) of April 17, 2005, and that the number of days from the beginning of the "B period" (April 17, 2008, i.e., three years from the 371(b) date) to the end of the "B period" (January 18, 2011, i.e., the day the '083 patent issued) is 1005 days.

Patentees argument has been considered but is not persuasive.

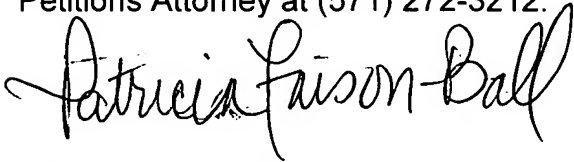
Patentees are advised that in an international application, the over 3 year pendency period is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f). See 1.702(b). In this instance, the national stage commencement date is Monday, April 18, 2005 (not April 17, 2005, the date used by patentees for this calculation). The priority date of this application is October 17, 2002. As the requirements for early commencement were not met, the national stage commenced in this application at the end of the thirty-month period. Further, as the expiration of the 30-month period pursuant to 35 U.S.C. 371(b) fell on a Sunday, the period expired on the subsequent business day. See PCT Rule 80.5. Accordingly, the commencement date is Monday, April 18, 2005. Thus, the over

3 year period is 1005 days, counting the number of days beginning on April 18, 2008 and ending on January 18, 2011, the date of issuance of the patent.

In view thereof, the patent term adjustment indicated in the patent is properly reflected.

As such, the patent term adjustment is 823 days as previously indicated. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions